

# MINUTES

## Rules Review Committee



Senator Mike Vehle, Chair  
Representative Timothy Johns, Vice Chair

Three hundred sixty-first meeting  
Monday  
November 14, 2016

Room 414  
State Capitol  
Pierre, South Dakota

### Other DDN Site Locations:

University Center  
4801 N. Career Ave., Room FADM 145  
Sioux Falls, South Dakota

Black Hills State University  
1200 University Station, Room LIB 9  
Spearfish, South Dakota

The three hundred sixty-first meeting of the Rules Review Committee was called to order by Senator Mike Vehle (Chair) at 10:08 a.m., CT, on November 14, 2016, in Room 414 at the State Capitol, Pierre, South Dakota and via the Digital Dakota Network (DDN) at the following locations: University Center, 4801 N. Career Ave., Room FADM 145, Sioux Falls, South Dakota and Black Hills State University, 1200 University Station, Room LIB 9, Spearfish, South Dakota.

A quorum was determined with the following members answering the roll call: Senators Mike Vehle (Chair), Jim Bradford and Phyllis Heineman and Representatives Peggy Gibson and Timothy Johns (Vice Chair). Representative Jean Hunhoff was excused. Staff members present were Doug Decker, Code Counsel, and Kris Schneider, Senior Legislative Secretary.

*All material distributed at the meeting is attached to the original minutes on file in the Legislative Research Council (LRC). For the purpose of continuity, these minutes are not necessarily in chronological order. This meeting was recorded by South Dakota Public Broadcasting. The archived recording is available at the LRC website at <http://sdlegislature.gov> under "Interim."*

### Approval of Minutes

*Representative Gibson moved, seconded by Senator Heineman, that the minutes of the September 26, 2016, meeting be approved. Motion prevailed on a roll call vote with 5 ayes, 1 excused. Members voting aye: Bradford, Gibson, Heineman, Johns, and Vehle. Member excused: Hunhoff.*

### Staff Report

**Mr. Doug Decker**, Code Counsel, briefly reviewed draft legislation regarding public notices and submitting written comments at a public hearing relative to the rule-making process. Chair Vehle stated that the committee will discuss the bill draft at the end of the meeting.

### Rules Reviewed

**Department of Agriculture: Division of Agricultural Services** – Amend rules to maintain compliance in the dairy industry at the farm and plant level to meet Grade "A" requirements and maintain interstate

shipment of milk and milk products as determined by FDA Milk Safety Branch and update references; adopt current seed inspection procedures and update references to the Rules for Testing Seed; require that protective spill equipment be used to unload commercial fertilizer and update references to publications.

**Mr. Brandon Beshears** reviewed the proposed rules. It was noted that the proposed change to ARSD 12:44:05:27 regarding unloading had been withdrawn following the public hearing.

*Representative Johns moved, seconded by Representative Gibson, that the review of the rules proposed by the Department of Agriculture: Division of Agricultural Services is complete. Motion prevailed on a roll call vote with 5 ayes, 1 excused. Members voting aye: Bradford, Gibson, Heineman, Johns, and Vehle. Member excused: Hunhoff.*

**Department of Game, Fish, and Parks** – Amend Depredation Permits rules to combine the elk depredation hunt registration and selection process with the deer, antelope and turkey registration and selection process; require online registration for all depredation hunts; require that landowners receiving big game depredation assistance must allow hunting access to hunters that possess a big game depredation permit without charge; enable the GFP Commission by resolution to determine the number of elk depredation permits and authorize the Secretary to issue permits where appropriate; allow elk depredation hunts to be utilized throughout the year if deemed necessary; establish a process whereby hunters who register for the elk pool from December 1 – 31 will be randomly selected to determine the order in which they are contacted if a depredation hunt is needed and after December 31, additional hunters will be registered in the pool in the order that they enroll; limit those who may register for an elk depredation hunt to only residents who were not issued an elk license from the current regular elk drawing; establish a \$20 fee for an elk depredation permit with no charge for landowner permits; limit the maximum number of landowner/operator elk depredation permits that may be issued to one per household or ranch; authorize elk depredation hunts to be utilized in an established elk hunting unit as well as areas outside an established elk hunting unit; establish that elk depredation hunts will not occur within an established elk hunting unit during any open elk hunting season; provide that landowner preference or preference points do not apply to the issuance of elk depredation permits; provide that participation in an elk depredation hunt does not affect future eligibility or preference points in future lottery drawings for elk seasons; provide that the nine year waiting period does not apply to a person who registers for an elk depredation permit; and provide that the pool of registered elk depredation hunters expires on December 31 of the following year; repeal the chapter regarding Elk Depredation Permits rules and combine/consolidate it with the general rule chapter pertaining to issuance of depredation permits; amend Fishing Seasons and Methods rules to allow for baitfish use within the Black Hills Management Area and remove high-grading regulations specific to South Dakota/Minnesota border waters and replace them with the South Dakota inland regulations; provide authorization for landowners to perform fisheries management activities on created, man-made impoundments on land they own or lease; remove the 15 inch minimum size restrictions for black bass (largemouth and smallmouth bass) on Carthage, Dimock, Vermillion, Hanson and Staum Lakes; remove the 14 to 18 inch protected slot limit for black bass on Enemy Swim and Pickerel Lakes; and remove the 15 inch minimum size restriction for walleye and the 14 to 18 inch protected slot limit for black bass from Campbell Sough; reopen a snagging season for salmon on Lake Oahe during the months of October and November; clarify the hours during which snagging of paddlefish can occur on portions of the Big Sioux River included in

the fall paddlefish snagging season; lengthen the spearing/archery season for game fish (except paddlefish and sturgeon) in inland waters open to game fish spearing from current dates of June 15 through March 15 to May 1 through March 31, inclusive; change hours from sunrise to sunset to one-half hour before sunrise to sunset; add crossbows as a legal method of take for game fish on inland and border waters; open all inland waters (including rivers and streams during open seasons), except those managed for muskies or closed elsewhere in administrative rule, to take of catfish and northern pike during established season dates; close Middle Lynn Lake to the spearing of catfish and northern pike; and open Waubay and Bitter Lakes in Day County, Swan and Dry #2 Lakes in Clark County, Albert, Henry, Thompson and Whitewood Lakes in Kingsbury County, to spearing of all game fish except paddlefish and sturgeon during established season dates; allow non-commercial take of bait in the Black Hills Fish Management Area except from Pactola, Deerfield and Sheridan Lakes; amend Special Permits and Licenses rules to allow fish health inspections to be conducted according to the "World Animal Health Organization (OIE) Aquatic Code 19th Edition, 2016" or according to the American Fisheries Society Fish Health Section's "Suggested Procedures for the Detection and Identification of Certain Finfish and Shellfish Pathogens, 2014 Edition."

**Mr. Tony Leif** reviewed the proposed rules.

*Representative Johns moved, seconded by Representative Gibson, that the review of the rules proposed by the Department of Game, Fish and Parks is complete. Motion prevailed on a roll call vote with 5 ayes, 1 excused. Members voting aye: Bradford, Gibson, Heineman, Johns, and Vehle. Member excused: Hunhoff.*

**Department of Game, Fish and Parks** – Amend a Uses of Parks and Public Lands rule to allow for removal of shed antlers from state-owned lands; amend Spring Wild Turkey Hunting Season rules to set the number and types of licenses available for the Prairie Units, make adjustments to the Black Hill and Unit 49A (Meade County) unit boundaries as outlined in the South Dakota Wild Turkey Management Plan, 2016-2020, set the number of archery turkey access permits for Adams Homestead and Nature Preserve, and remove the language in rule depicting the license type and number of licenses from each hunting unit; amend Fishing Seasons and Methods rules to allow anglers to keep a legally caught possession limit of fish while on the ice, allow anglers to clean fish species, while on the ice, that do not have water-specific size restrictions, and require that fish possessed on the ice adhere to the transportation rule that requires fish to be readily countable; and amend Aquatic Invasive Species rules to add Red Swamp Crayfish to the list of invertebrate aquatic invasive species, allow for the transport of aquatic invasive species by an employee of a business that has been approved by the department to transport a boat or motorboat to a facility for the purpose of aquatic invasive species removal, and allow a person who has been authorized by the department to transport their own watercraft to a department-approved facility for immediate decontamination, remove the exception in rule that allows all drain plugs, bailers or valves in trailered boats to be closed or remain in place during transport from a boat ramp parking area to an immediately-adjacent fish cleaning station, and remove the exception in rule that allows fish or aquatic bait to be transported in water obtained from a lake, river, or stream from a boat ramp parking area to an immediately-adjacent fish cleaning station.

**Mr. Leif** reviewed the proposed rules.

*Representative Gibson moved, seconded by Senator Bradford, that the review of the rules proposed by the Department of Game, Fish and Parks is complete. Motion prevailed on a roll call vote with 5 ayes, 1 excused. Members voting aye: Bradford, Gibson, Heineman, Johns, and Vehle. Member excused: Hunhoff.*

**Department of Transportation** – Amend Speed Limits in Custer County, the 35 mph speed limit on State Trunk Highway 36 beginning at the junction of U.S. Highway 16A near the east gate of Custer State Park, then northeasterly for 0.5 mile is being extended an additional 0.2 mile, the speed limit on U.S. Highway 385 and State Trunk Highway 89 beginning at the junction with U.S. Highway 16 in Custer, then south for 0.2 mile is being reduced from 45 mph to 35 mph; repeal a redundant speed limit on U.S. Highway 385 and State Highway 89; amend a speed limit on U.S. Highway 16 and U.S. Highway 385 beginning at the junction of U.S. Highway 16 and 385 in the west part of the city of Custer, then easterly to the intersection of Third Street is being reduced to 25 mph; and amend a Rest Area Newspaper Vending Devices rule to require the owner of a newspaper vending device at an interstate rest area to display a clear and visible notice on the device that identifies the name, mailing address, and telephone number of the person responsible for refunds and for the day-to-day operation and maintenance of the devices and display a clearly visible statement that rest area personnel are not responsible for refunds.

**Ms. Karla Engle and Ms. Christina Bennett** reviewed the proposed rules.

*Senator Bradford moved, seconded by Representative Gibson, that the review of the rules proposed by the Department of Transportation is complete. Motion prevailed on a roll call vote with 5 ayes, 1 excused. Members voting aye: Bradford, Gibson, Heineman, Johns, and Vehle. Member excused: Hunhoff.*

**Department of Labor and Regulation: Division of Insurance** – Amend a rule to adopt the National Association of Insurance Commissioners' Valuation Manual.

**Ms. Melissa Klemann** reviewed the proposed rule change.

*Representative Gibson moved, seconded by Representative Johns, that the review of the rule proposed by the Department of Labor and Regulation: Division of Insurance is complete. Motion prevailed on a roll call vote with 5 ayes, 1 excused. Members voting aye: Bradford, Gibson, Heineman, Johns, and Vehle. Member excused: Hunhoff.*

**Department of Labor and Regulation: Division of Securities** – Amend rules to delete references to citations that were previously repealed and delete the Standard & Poor's Corporation Descriptions manual from the list of approved manuals.

**Mr. Mike Youngberg** reviewed the proposed rules.

*Representative Johns moved, seconded by Senator Heineman, that the review of the rules proposed by the Department of Labor and Regulation: Division of Securities is complete. Motion prevailed on a roll call vote with 5 ayes, 1 excused. Members voting aye: Bradford, Gibson, Heineman, Johns, and Vehle. Member excused: Hunhoff.*

**Department of Labor and Regulation: Division of Securities** – Amend a rule to clarify and acknowledge that dual investment adviser registration is allowed.

**Mr. Youngberg** reviewed the proposed rule change.

*Senator Vehle moved, seconded by Representative Gibson, that the review of the rule proposed by the Department of Labor and Regulation: Division of Securities is complete. Motion prevailed on a roll call vote with 5 ayes, 1 excused. Members voting aye: Bradford, Gibson, Heineman, Johns, and Vehle. Member excused: Hunhoff.*

**Department of Revenue: SD Gaming Commission** – Amend Racing rules to bring the rules into line with current industry practices, create an ineligible list for horses scratched from a race and create the mechanism for such list, provide for workouts for horses that have not previously been eligible for entry in races, amend the list of prohibited items at the race track, remove Flunixin from the list of authorized substances, allow emergency medical technicians to conduct medical examinations of licensed persons and allow law enforcement officers to use modern technology to detect prohibited substances; amend Gaming rules to clarify the game of Buster blackjack and add new pay tables, clarify the play of the game, make changes to the name of the game and add pay table options to Bonus Spin blackjack, clarify which licensees may destroy slot machines, and allow for a variation of the game of craps called Bonus craps.

**Mr. Larry Eliason**, Executive Secretary, **Mr. Craig Sparrow**, and **Mr. Mike Shaw**, Pierre, Attorney representing the Commission on Gaming, reviewed the proposed rules.

### **Public Testimony**

**Mr. Jesse Allen**, Deadwood, representing Tin Lizzie and South Dakota Gaming, explained how to play the Buster blackjack and the Bonus Spin blackjack.

*Representative Gibson moved, seconded by Senator Vehle, that the review of the rules proposed by the Department of Revenue: SD Gaming Commission is complete. Motion prevailed on a roll call vote with 5 ayes, 1 excused. Members voting aye: Bradford, Gibson, Heineman, Johns, and Vehle. Member excused: Hunhoff.*

**Department of Social Services: Division of Behavioral Health** – Amend rules to repeal Article 46:05 Substance use disorders and rewrite as Article 67:61 under the department; repeal Article 46:20 Mental health and rewrite as Article 67:62. Overall, duplicative language, outdated terms, and language no longer current were removed; "Alcohol and Drug Abuse" was updated to "Substance Use Disorder" or SUD; align the Articles; update to the current diagnostic manual DSM-5; add telemedicine as a reimbursable service; better detail client rights; revise treatment plan timeframes to better match the structure of programs; update dietary guidelines; add sentinel effect notifications; clarify certain accreditation requirements; and update the life safety code.

**Ms. Teresa Schulte** and **Ms. Melanie Boetel** reviewed the proposed rules.

### Public Testimony

**Mr. Terrance Dosch**, Pierre, representing the South Dakota Council of Mental Health Centers and the South Dakota Council of Substance Abuse Directors, spoke in support of the proposed rules.

*Senator Vehle moved, seconded by Senator Heineman, that the review of the rules proposed by the Department of Social Services: Division of Behavioral Health is complete. Motion prevailed on a roll call vote with 4 ayes, 2 excused. Members voting aye: Gibson, Heineman, Johns, and Vehle. Members excused: Bradford and Hunhoff.*

**Department of Social Services: Division of Medical Services** – Amend rules to update definitions and other language, clarify coverage of certain services, implement ambulatory payment classification reimbursement methodology, update substance abuse rule references to reflect the new articles, update the national provider identification number requirements for reimbursement, move and update the substance use disorder provisions from Human Services to Social Services, and allow for in-state liver transplant option.

**Ms. Schulte** and **Ms. Sarah Aker** reviewed the proposed rules.

*Representative Johns moved, seconded by Senator Heineman, that the review of the rules proposed by the Department of Social Services: Division of Medical Services is complete. Motion prevailed on a roll call vote with 4 ayes, 2 excused. Members voting aye: Gibson, Heineman, Johns, and Vehle. Members excused: Bradford and Hunhoff.*

**Bureau of Administration: Obligation Recovery Center** – Adopt rules to establish specific procedures that must be followed by the Obligation Recovery Center in handling debt and by any state agency, Unified Judicial System, Board of Regents, or constitutional office that refers debt to the Obligation Recovery Center.

**Mr. Scott Bollinger** reviewed the proposed rules.

*Senator Vehle moved, seconded by Representative Gibson, that the review of the rules proposed by the Bureau of Administration: Obligation Recovery Center is complete. Motion prevailed on a roll call vote with 4 ayes, 2 excused. Members voting aye: Gibson, Heineman, Johns, and Vehle. Members excused: Bradford and Hunhoff.*

**Bureau of Human Resources: Civil Service Commission** – Amend a rule to allow an out-of-state law enforcement officer, who is currently certified or has been in the last two years, to be placed on the requisition list without taking a written exam and specify the appointing authority shall determine the minimum score for the written exam.

**Mr. Aaron Arnold** and **Mr. Rick Miller** reviewed the proposed rule.

*Senator Vehle moved, seconded by Representative Gibson, that the review of the rule proposed by the Bureau of Human Resources: Civil Service Commission is complete. Motion prevailed on a roll call vote*

*with 4 ayes, 2 excused. Members voting aye: Gibson, Heineman, Johns, and Vehle. Members excused: Bradford and Hunhoff.*

**Department of Labor and Regulation: Board of Technical Professions** – Amend a rule to add deadlines for national examinations that will be moved to computer based testing (CBT).

**Mr. Graham Oey** reviewed the proposed rules.

*Representative Gibson moved, seconded by Representative Johns, that the review of the rule proposed by the Department of Labor and Regulation: Board of Technical Professions is complete. Motion prevailed on a roll call vote with 4 ayes, 2 excused. Members voting aye: Gibson, Heineman, Johns, and Vehle. Members excused: Bradford and Hunhoff.*

**Office of the Secretary of State: Board of Finance** – Amend rules to remove the signature definition in order to facilitate electronic signatures, update an obsolete statute reference, and change the minimum salary grade threshold to match the current general pay structure.

**Ms. Teresa Bray** and **Ms. Ann Holzhauser** reviewed the proposed rules.

### **Public Testimony**

**Ms. Ellen Zeller** spoke in support of the amendment to ARSD 5:01:07:07 regarding moving expenses.

A brief discussion was held on ARSD 5:01:01:01(14) regarding the removal of an original handwritten signature requirement. In response to questions, Mr. Decker stated that the rule was a definition of convenience and will not change any substantive requirement requiring an original signature on a voucher.

*Senator Vehle moved, seconded by Representative Gibson, that the review of the rules proposed by the Office of the Secretary of State: Board of Finance is complete. Motion prevailed on a roll call vote with 4 ayes, 2 excused. Members voting aye: Gibson, Heineman, Johns, and Vehle. Members excused: Bradford and Hunhoff.*

### **Draft Legislation**

**Mr. Decker** discussed draft legislation entitled "An Act to revise certain requirements for a public notice of a public meeting." (**Document 1**). The draft legislation revises SDCL § 1-25-1.3 regarding the time for posting public notices and SDCL §§ 1-26-4 and 1-26-4.1 regarding the timeframe for written comments relative to the rule-making process.

*Representative Gibson moved, seconded by Senator Heineman, that the draft legislation be introduced as a committee bill for the 2017 Legislative Session. Motion prevailed on a roll call vote with 4 ayes, 2 excused. Members voting aye: Gibson, Heineman, Johns, and Vehle. Members excused: Bradford and Hunhoff.*

### **Next Meeting Date**

The next meeting of the Interim Rules Review Committee will be held in March to set the tentative schedule for the 2017 interim.

### **Adjournment**

*Representative Gibson moved, seconded by Senator Heineman, that the meeting be adjourned. Motion prevailed on a voice vote.*

Chair Vehle adjourned the meeting at 2:53 p.m.